THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 9273 OF 2005

Date: 21.07.2006.

Between:

J. Narasaiah.

… Petitioner

and

The General Manger, Warangal District Cooperative Central Bank Limited, Subedari, Hanmakonda, Warangal District and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 9273 OF 2005

ORDER:

Questioning the proceedings of the respondents dated 30.11.2004 in continuing him under suspension beyond the age of superannuation and for a declaration that the respondents had no authority to proceed with the disciplinary proceedings after the petitioner attained the age of superannuation on 30.11.2004, the present writ petition is filed.

Facts, to the extent necessary, are that the petitioner, Deputy General Manger of the respondent Bank, was placed under suspension on 22.01.2002. He was issued a charge sheet on 05.04.2002 to which he submitted his explanation on 08.05.2002. Consequent thereto a departmental enquiry was conducted and, on completion of enquiry, a show cause notice proposing the punishment of dismissal from service was issued on 04.10.2004. Questioning the said show cause notice as without jurisdiction, and that the authority which issued the said show cause notice was not the disciplinary authority but the appellate authority, W.P.No.19286 of 2004 was filed. This Court granted interim suspension. During the pendency of proceedings before this Court, the petitioner retired from service on reaching his age of superannuation on 30.11.2004. The respondents, however, extended his suspension, vide proceedings dated 30.11.2004.

W.P.No. 19286 of 2004 was disposed of by order dated 25.03.2005 and the show cause notice dated 04.10.2005 was set aside.

Sri Nandigam Krishna Rao, learned Counsel for the petitioner, would place reliance on a Division bench judgment of this Court in **General Manager, Adilabad District Co-operative Central Bank Limited, Adilabad Vs. K. Ranga Rao**[1] in support of his submission that, on an employee reaching his age of superannuation, the master and servant relationship ceases and subsequent thereto, more so in the absence of any specific provision in the statutory rules in this regard, no disciplinary action can be continued against him.

Sri P. Nageswara Sree, learned Standing Counsel for the respondent, on the other hand, would submit that the charges levelled against the petitioner are grave and serious and the respondents were, therefore, justified in continuing the departmental enquiry. Learned Counsel would submit that the petitioner cannot take advantage, of the interim order obtained by him in W.P.No. 19286 of 2004, to avoid disciplinary action being taken against him pursuant to a departmental enquiry, merely on the ground that he had, in the meanwhile, retired from service. Learned Counsel would submit that, in the absence of any prohibition under the rules, it was always open to the competent authority to continue with the departmental enquiry and to impose punishment on the delinquent employee for proved misconduct.

I am afraid I cannot agree. The Division bench of this Court in **K. Rangarao**[1]**,** after considering the earlier judgments of the Apex Court in **State of Punjab Vs. Khemi Ram**[2], **State Bank of**

India Vs.

A.N. Gupta[3], **State Bank of India Vs. C.B. Dhall**[4] and **Bhagirathi Jena Vs. Board of Directors, OSFC** [5], held thus:

> "Having regard to the authoritative pronouncements of the Apex Court, there cannot be any doubt whatsoever that despite the fact that the writ petitioner had been allowed to retire without prejudice to the right of the employer to continue the disciplinary proceedings, the same was not permissible in law. The only course open to the authorities is not to allow the petitioner to retire on superannuation. Proceedings can be initiated against a retired employee only for the purpose of withholding the whole or part of pension provided there exists any provision therefor."

Since it is not in dispute that there is no specific provision, which enables the respondents herein to continue the disciplinary proceedings against an employee consequent on his reaching the age of superanuation, the action of the respondents in continuing the petitioner under suspension and in continuing the departmental proceedings against him subsequent to his having reached the age of superannuation on 30.11.2004, are declared illegal, and the impugned order dated 30.11.2004 is quashed.

Following the judgment of the Supreme Court in **Bhagirathi Jena**[5], the respondents are directed to pay the whole amount due and payable to the petitioner during the period of his suspension, after deducting any subsistence allowance which may have been paid to him during this period. The writ petition is allowed. However in the circumstances without costs.

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Dated: 21.07.2006 RAMESH RANGANATHAN, J

MRKR

[1] 2002(1) ALD 293 (DB)

[2] AIR 1970 SC 214

[3] AIR 1998 SC 159

[4] AIR 1998 SC 1500

[5] 1999 AIR SCW 1442